

NUCLEAR WASTE FUND MANAGEMENT

JULY 9, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3981]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3981) to reclassify fees paid into the Nuclear Waste Fund as offsetting collections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. NUCLEAR WASTE FUND MANAGEMENT.

(a) OFFSETTING COLLECTIONS.—Beginning on October 1, 2004, and continuing through September 30, 2009, fees collected by the Secretary of Energy and deposited into the Nuclear Waste Fund under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) shall be credited to the Nuclear Waste Fund as offsetting collections in amounts not to exceed the amounts annually appropriated during that period from the Nuclear Waste Fund. For fiscal year 2005, such amounts shall not exceed \$576,000,000. Consistent with existing law, such amounts may only be used for purposes authorized under the Nuclear Waste Policy Act of 1982.

(b) ADDITIONAL NECESSARY SUMS.—To the extent that the level of budgetary resources from offsetting collections is insufficient to implement activities under the Nuclear Waste Policy Act of 1982 for a fiscal year, there are authorized to be appropriated for implementing those activities such additional sums as may be necessary from the balances in the Nuclear Waste Fund.

SEC. 2. REPORT.

Not later than one year after the date of enactment of this Act, and every two years thereafter, the Secretary shall submit to the Congress a report on the adequacy of the Nuclear Waste Fund that includes an assessment of whether current unexpended balances in the Fund, if made fully available to the Secretary, would affect annual fee determinations (including whether a reduction to the fee may be necessary) made pursuant to section 302(a)(4) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(a)(4)). The report shall also include recommendations to Congress on whether this Act should be extended beyond its current expiration date of September 30, 2009, and whether alternative approaches may be necessary to access unexpended balances in the Nuclear Waste Fund.

PURPOSE AND SUMMARY

H.R. 3981 authorizes the reclassification of future contributions to the Nuclear Waste Fund (NWF) as offsetting collections.

BACKGROUND AND NEED FOR LEGISLATION

The nation's radioactive waste inventories primarily consist of spent nuclear fuel from operating and decommissioned commercial nuclear power plants, and spent nuclear fuel and high-level wastes from U.S. government defense activities. Approximately 45,000 metric tons of spent nuclear fuel from past and ongoing commercial nuclear power operations is currently stored at 72 sites throughout the country. An additional 2,000 metric tons of spent nuclear fuel is generated annually by operating nuclear power plants. The total amount of commercial spent nuclear fuel is expected to reach approximately 60,000 metric tons by the year 2010. The U.S. government's high-level radioactive waste inventories are located at five sites nationwide, and include 2,500 metric tons of spent fuel from U.S. Naval Operations and defense production activities, weapons-usable surplus plutonium, and more than 100 million gallons of high-level radioactive wastes from Department of Energy (DOE) defense production activities.

The Nuclear Waste Policy Act (NWPA) of 1982 established a system for identifying and selecting a site for permanent disposal of spent nuclear fuel and high-level radioactive waste, and also created the Office of Civilian Radioactive Waste Management (OCRWM) within the DOE to carry out the program. Pursuant to the NWPA amendments of 1987, Congress selected the Yucca Mountain site in Nevada as the single site to be characterized by

DOE for long-term geologic disposal of the nation's high-level radioactive waste inventories.

On February 15, 2002, the President transmitted his recommendation to Congress recommending the Yucca Mountain site, based on his decision that the Yucca Mountain site is qualified for application for a construction authorization for a repository. On April 8, 2002, the Governor of the State of Nevada submitted to the Speaker of the House a notice of disapproval, and a statement of reasons why the Governor disapproved the recommended repository site. On May 8, 2002, the House passed H.J. Res. 87 to override Nevada's objection with a vote of 306 yeas and 117 nays. The resolution was later passed in the Senate by voice vote, clearing the way for DOE to develop a license application (LA) for a Yucca construction authorization license from the Nuclear Regulatory Commission (NRC).

DOE has already spent more than \$7 billion on characterization and related activities at Yucca Mountain, and estimates that approximately \$50 billion will be spent during the lifetime of the project. The NWPA established the NWF to pay for the costs of characterizing and developing the Yucca Mountain site. The Fund is derived from fees collected from a 1.0 mil (0.1 cent) per kilowatt-hour assessment on all electricity generated by commercial nuclear power plants, as well as equivalent fee contributions from federal agencies with spent fuel or other high level wastes to be disposed of at Yucca Mountain. To date, the fund has accumulated \$22.9 billion in fees and interest. Approximately \$749 million in fees are paid into the NWF every year. The NWF currently has a balance of approximately \$15 billion.

The fund was created for the sole purpose of paying for the full cost of disposal of nuclear wastes, and to provide a steady stream of funds available for waste disposal. Due to budgetary rules enacted after the NWPA, there is currently no direct link between fees collected annually, and what is appropriated for the development of Yucca Mountain. Annual appropriations for Yucca Mountain compete with other spending priorities in the energy and water appropriations allocation. Consequently, the program has historically been funded below what several Administrations have requested. Over the past 10 years, appropriations for Yucca Mountain have been \$720 million below Administration budget requests.

The Committee held a legislative hearing on H.R. 3981 on March 25, 2004. At that hearing DOE pointed out in written testimony that it will need a consistent and steady stream of funding averaging more than \$1 billion a year. According to DOE, "If these funding levels are not achieved, we cannot meet the 2010 goal" of opening the repository.

H.R. 3981, introduced by request by Chairman Barton, seeks to define future contributions to the Nuclear Waste Fund (NWF) as offsetting collections for nuclear waste program expenditures. The intent of the proposal is to create a direct link between funds coming into the NWF, and annual appropriations for the waste program, and prevent the diversion of these funds toward other Federal programs. By crediting the \$749 million in annual fees paid into the fund as offsetting collections, the appropriation of these offsetting collections will result in a net appropriation of \$0 (because the appropriation would be directly offset by fees). Thus,

Yucca Mountain expenditures would not score under discretionary spending caps, and it would not compete with other spending priorities.

As DOE pointed out at the March 25th hearing, H.R. 3981 would not reduce Congressional control of the program. Any funds for Yucca Mountain would still have to be appropriated by Congress.

HEARINGS

The Subcommittee on Energy and Air Quality held a legislative hearing on March 24, 2004. The Subcommittee received testimony from: The Honorable Jim Gibbons, Member, U.S. House of Representatives; The Honorable Shelley Berkley, Member, U.S. House of Representatives; The Honorable Jon C. Porter, Member, U.S. House of Representatives; The Honorable Robert Card, Under Secretary, Department of Energy, accompanied by Dr. Margaret S. Y. Chu, Director, Office of Civilian Radioactive Waste Management, The Honorable Nils J. Diaz, Chairman, U.S. Nuclear Regulatory Commission; Dr. David J. Duquette, U.S. Nuclear Waste Technical Review Board; Mr. John T. Mitchell, President and General Manager, Bechtel SAIC, LLC; Ms. Angelina Howard, Executive Vice President, Nuclear Energy Institute; and, The Honorable Sam J. Ervin, IV, Commissioner, North Carolina Utilities Commission.

COMMITTEE CONSIDERATION

On Wednesday, June 16, 2004, the Subcommittee on Energy and Air Quality met in open markup session and approved H.R. 3981 for Full Committee consideration, as amended, by a voice vote, a quorum being present. On Thursday, June 24, 2004, the Full Committee met in open markup session and favorably ordered reported H.R. 3981, as amended, by a roll call vote of 29 yeas and 19 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following is the recorded vote taken on the motion by Mr. Pickering ordering H.R. 3981 reported to the House, as amended, which was agreed to by a record vote of 29 yeas and 19 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 74

BILL: H.R. 3981, to reclassify fees paid into the Nuclear Wasted Fund as offsetting collections, and for other purposes.

AMENDMENT: Motion by Mr. Pickering to order H.R. 3981 reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 29 yeas to 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton				Mr. Dingell		X	
Mr. Tauzin				Mr. Waxman			
Mr. Hall	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Boucher		X	
Mr. Upton	X			Mr. Towns		X	
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor				Mr. Brown		X	
Mr. Greenwood	X			Mr. Gordon			
Mr. Cox	X			Mr. Deutsch			
Mr. Deal	X			Mr. Rush	X		
Mr. Burr	X			Ms. Eshoo		X	
Mr. Whitfield	X			Mr. Stupak		X	
Mr. Norwood	X			Mr. Engel		X	
Mrs. Cubin	X			Mr. Wynn	X		
Mr. Shimkus	X			Mr. Green		X	
Mrs. Wilson	X			Ms. McCarthy		X	
Mr. Shadegg	X			Mr. Strickland		X	
Mr. Pickering	X			Ms. DeGette		X	
Mr. Fossella	X			Ms. Capps		X	
Mr. Buyer	X			Mr. Doyle		X	
Mr. Radanovich	X			Mr. John			
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis	X		
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X						
Mr. Rogers							
Mr. Issa							
Mr. Otter	X						
Mr. Sullivan	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3981 is to authorize the reclassification of future contributions to the Nuclear Waste Fund (NWF) as offsetting collections.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3981, to reclassify fees paid into the Nuclear Waste Fund as offsetting collections, and for other purposes, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 2004.

Hon. JOE BARTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3981, a bill to reclassify fees paid into the Nuclear Waste Fund as offsetting collections, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3981—A bill to reclassify fees paid into the Nuclear Waste Fund as offsetting collections, and for other purposes

Summary: For the next five years, H.R. 3981 would change the budgetary treatment of fees paid by nuclear utilities for the future storage of nuclear waste at the Yucca Mountain site in Nevada. Currently, collections from that fee are recorded in the budget as

offsetting receipts, thus reducing mandatory spending. Under H.R. 3981, the annual fee would be treated as an offsetting collection and would offset discretionary spending provided in future appropriations bills. The legislation would authorize the appropriation of sums necessary to prepare the Yucca Mountain site to accept nuclear waste.

The reclassification of the nuclear waste fees would raise mandatory outlays by an estimated \$3.6 billion. In addition, CBO estimates that the bill would authorize the appropriation of \$6.4 billion over the 2005–2009 period for construction work at the Yucca Mountain site. Resulting outlays would come to \$5.3 billion during that period. The reclassified fees would partially offset those outlays, so that net discretionary spending for the nuclear waste disposal program would total \$1.8 billion over the five-year period.

H.R. 3981 contains no intergovernmental or private-sector mandates, as defined by the Unfunded Mandates Reform Act (UMRA), and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3981 is shown in the following table. The costs of this legislation fall within budget function 270 (energy).

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	576	754	757	767	767
Estimated Outlays	0	576	754	757	767	767
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Nuclear Waste Disposal:						
Budget Authority ¹	577	0	0	0	0	0
Estimated Outlays	544	173	0	0	0	0
Proposed Changes:						
Estimated Gross Authorization Level	0	880	1,162	1,103	1,645	1,643
Estimated Outlays	0	440	845	1,076	1,386	1,536
Less: Offsetting Collections:						
Estimated Authorization Level	0	–576	–754	–757	–767	–767
Estimated Outlays	0	–576	–754	–757	–767	–767
Net Spending Under H.R. 3981 for Nuclear Waste Disposal:						
Authorization Level ¹	577	304	408	346	878	876
Estimated Outlays	544	37	91	319	619	769

¹ The 2004 level is the amount appropriated for that year.

Basis of estimate: For this estimate, CBO assumes that H.R. 3981 will be enacted near the end of fiscal year 2004. We estimate that reclassifying the nuclear waste fee would increase direct spending by \$3.6 billion over the 2005–2009 period and reduce discretionary spending by the same amount. If the estimated sums are appropriated, net discretionary spending over that five-year period would total \$1.8 billion.

Reclassification of the Nuclear Waste Fee

Currently utilities pay a fee equal to one mil (one tenth of one cent) per kilowatt-hour of electricity generated by nuclear power plants to the federal government for future storage of nuclear waste at the Yucca Mountain site in Nevada. CBO estimates that

receipts from such fees will amount to \$3.8 billion over the next five years.

H.R. 3981 would change the budgetary treatment of those fees. Instead of being classified as offsetting receipts (that is, offsets to mandatory spending), they would become offsetting collections (offsets to discretionary spending). That reclassification would be effective for five years. The amount reclassified would be limited to the sums appropriated for the nuclear waste disposal program, and could not exceed \$576 million in 2005. Because those receipts would no longer offset mandatory spending, outlays for that category of spending would increase by an estimated \$3.6 billion over the 2005–2009 period—assuming appropriation of the amounts CBO estimates would be authorized by the bill.

Cost of the Nuclear Waste Program

H.R. 3981 would authorize the appropriation of such sums as are necessary to implement activities related to the Yucca Mountain nuclear waste storage site over the 2005–2009 period. Based on information from the Department of Energy, CBO estimates the nuclear waste disposal program would need appropriations totaling \$6.4 billion over the 2005–2009 period; Outlays would total \$5.3 billion over that period. Those funds would be used for licensing and construction of the site, construction of rail lines to the site, appropriate storage casks and rail cars for transportation of nuclear waste, and related work.

Because the bill would reclassify existing fees for nuclear waste disposal, the net impact of the legislation on discretionary spending would be smaller. Net of the fees required under current law, appropriations would total \$2.8 billion and the resulting outlays would come to \$11.8 billion over the 2005–2009 period, CBO estimates.

Spending for the nuclear waste disposal program is expected to continue long after 2009. In its May 2001 report, *Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program*, the Department of Energy estimates the future cost to conduct the nuclear waste program is about \$50 billion, in constant 2000 dollars, from 2001 through closure and decommissioning of Yucca Mountain in 2119. (In December 2003, DOE certified that the 2001 life-cycle cost report remained valid.)

Intergovernmental and private-sector impact: H.R. 3981 contains no intergovernmental or private-sector mandates as defined by UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Lisa Driskill; Impact on State, Local, and Tribal Governments: Gregory Waring; and Impact on the Private Sector: Selena Caldera.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Nuclear Waste Fund management

Section 1 authorizes that all fees collected by the Secretary of Energy and deposited into the Nuclear Waste Fund over a five-year period between the dates October 1, 2004 and September 30, 2009 shall be credited to the Nuclear Waste Fund as offsetting collections in amounts not to exceed the amounts annually appropriated during that period from the Nuclear Waste Fund. For fiscal year 2005, such amounts shall not exceed \$576 million. Consistent with existing law, such amounts may only be used for purposes authorized under the Nuclear Waste Policy Act of 1982.

Section 2. Report

Section 2 requires a report to be issued within one year, and every two years thereafter, to be submitted to Congress by the Secretary of Energy that includes an assessment of whether current unexpended balances in the Fund, if made fully available to the Secretary, would affect annual fee determinations (including whether a reduction to the fee may be necessary) made pursuant to section 302(a)(4) of the Nuclear Waste Policy Act of 1982. The report shall also include recommendations to Congress on whether this Act should be extended beyond its current expiration date of September 30, 2009, and whether alternative approaches may be necessary to access unexpended balances in the Nuclear Waste Fund.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

DISSENTING VIEWS

The Committee's consideration of H.R. 3981 was precipitated by several unfortunate events including an inadequate budget request submitted by the Administration; an inadequate level of funding from the House Appropriations Committee, which set funding at \$131 million, rather than the \$880 million the Department of Energy (DOE) says it needs; and many years of diversion of ratepayers funds from the Nuclear Waste Trust Fund.

On several occasions this Committee, on a bipartisan basis, has attempted to reform the Nuclear Waste Fund. In the 104th Congress, the Committee passed H.R. 1020 by a vote of 30–4; in the 105th, H.R. 1270 was passed by a vote of 43–3; and in the 106th, H.R. 45 was passed by a 40–6 vote. While none of these efforts was ever enacted, they garnered wide support in the Committee because they represented thoughtful, bipartisan efforts to safeguard ratepayers' contributions. Unfortunately, H.R. 3981 does not meet the high standard set by these past efforts.

First, unlike past efforts, H.R. 3981 would do nothing to bind the appropriators' hands to ensure that each and every dollar of future ratepayer contributions to the Fund goes to the Yucca Mountain program. Diversion of ratepayer funds by the Appropriations Committee has been a chief obstacle to the program's success and must be dealt with in any legislative attempt to reform the Fund. Second, and most importantly, H.R. 3981 does nothing to recover any part of the nearly \$15 billion in ratepayer contributions that have accumulated in the Fund since its inception. For example, the ratepayers of Michigan have contributed nearly \$500 million; ratepayers in Texas over \$700 million; and ratepayers in Illinois, a staggering \$2.7 billion. Again, this is an issue of utmost importance that must be addressed in any reform effort. Finally, it must be noted that the need for this bill, initially proposed by the Office of Management and Budget (OMB), is unclear. On May 4, 2004, Ranking Member John D. Dingell wrote to OMB to request whether the agency could take administrative action to correct the funding shortfall for FY 2005. As we write these views we have yet to receive a response.

The Majority chose not to consider other funding proposals that would have protected ratepayer investments. For example, a user fee, like the provision included in H.R. 1270 as passed by the House during the 105th Congress, would have ensured that every dollar collected from ratepayers goes to the Yucca Mountain program. An alternative, which would achieve the same effect, is a one-year direct spending option to ensure that the Secretary spends the full \$749 million received from ratepayers in FY 2005 on the Yucca Mountain project.

Our concerns with the bill were compounded by the amendment in the nature of a substitute. The amendment failed to correct any

of the deficiencies in the underlying bill, and at the same time, limited the amount to be spent in FY 2005 to \$576 million, which when combined with the direct appropriation of \$131 million was \$173 million short of the Administration's request of \$880 million. This limitation was particularly troubling given that \$749 million is expected to be received from ratepayer contributions in FY 2005. By limiting the amount of the fees that could be used in FY 2005 to \$576 million, supporters of the Committee amendment were implicitly sanctioning the diversion of \$173 million in ratepayer contributions. Given the Committee's strong bipartisan history of voting to protect ratepayer funds from diversion, this amendment set an unacceptable precedent for those Members concerned with this deplorable practice.

As was noted during the Committee consideration of this bill, the funding proposal was not about a referendum on nuclear power, but was actually an indictment of budgetary decisions made in the past four years which took projected surpluses of trillions of dollars into projected deficits of trillions of dollars. This turnaround, due to decisions such as overly large tax cuts, has only increased the pressure on the Office of Management and Budget, as well as appropriators, to divert ratepayer contributions to pay for other government spending and tax cuts. The raiding of the Nuclear Waste Fund is unfortunately matched by the similar raiding of the Social Security Trust Fund, the Medicare Trust Fund, and numerous other funds. Ratepayer funds likely cannot be protected, and the Waste Fund likely cannot be returned to its intended purpose, until broader budgetary sanity is restored.

JOHN D. DINGELL.
KAREN MCCARTHY.
TED STRICKLAND.
RICK BOUCHER.
BART GORDON.
GENE GREEN.
TOM ALLEN.